

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
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April 3, 2002

Opinion No. 02-040

Statutory Change to General Sessions Judges' Salaries

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**QUESTIONS**

1. Since Cumberland County, as a result of the 2000 census, has grown into a higher classification, may the county commission increase the salary of a general sessions court judge?
2. Is legislation needed to make this change?

**OPINIONS**

1. No.
2. Under Article VI, Section 7 of the Tennessee Constitution, the General Assembly may not constitutionally enact a statute that would immediately increase the salary of a judge of an inferior court already in office. Any such statutory increase could only apply to the salary of a judge who comes to office after the statute is passed.

**ANALYSIS**

1. Power of County Commission to Increase Salary of General Sessions Judge

This opinion concerns the salary of a general sessions judge, specifically the Cumberland County General Sessions Judge. The first question is whether the Cumberland County Commission may increase the salary of the general sessions judge. Article VI, Section 7 of the Tennessee Constitution provides:

The Judges of the Supreme or Inferior Courts, shall, at stated times, receive a compensation for their services, *to be ascertained by law*, which shall not be increased or diminished during the time for which they are elected. They shall not be allowed any fees or perquisites of office nor hold any other office of trust or profit under this State or the United States.

(Emphasis added). A general sessions judge is the judge of an “inferior court” within the meaning of this

provision. *Barker v. Harmon*, 882 S.W.2d 352 (Tenn. 1994). Under this provision, the power to ascertain and fix the compensation of judges of inferior courts is vested in the General Assembly, and cannot be delegated to county commissions or any other body. *Franks v. State*, 772 S.W.2d 428 (Tenn. 1989). The county commission, therefore, may not increase the salary of the Cumberland County General Sessions Judge.

The request notes that, under the 2000 census, Cumberland County moved from a county of the third class to a county of the first class. Statutes governing the salary of general sessions judges divide counties into eight different classes by population according to the most recent census. Tenn. Code Ann. § 16-15-5001(d) provides:

(1) If a county is in one (1) class as provided in this section on September 1 of the year in which a judge is elected to office, and after such date such county moves into a lower class on the basis of a subsequent federal census, the salary of such judge shall not be diminished during the time for which such judge was elected.

(2) If a county is in one class as provided in this section on September 1, of the year in which a judge is elected to office and after such date, such county moves into another class on the basis of a subsequent census, the salary of such judge shall be determined by the higher classification for the remainder of the term for which the judge was elected.

Thus, by operation of the current statute, where a county moves into a higher classification as a result of a census during a judge's term of office, the judge's salary for the remainder of that judge's term is calculated under the higher classification. If a county moves into a lower classification as a result of a census, the judge's salary is determined by the higher classification for the remainder of the term for which the judge was elected. This Office has opined that this statute does not violate Article VI, Section 7 to the extent it applies to any judge whose term began after the statute was enacted. Op. Tenn. Atty. Gen. 00-123 (August 4, 2000). Our conclusion was based on the fact that the General Assembly has no power over the amount of change in the population of a county and that, therefore, the statute does not threaten the independence of judges. This rationale, however, would not authorize a county commission to increase the salary of a general sessions judge when the population of the county increases. As previously stated, the power to fix the compensation of judges of inferior courts rests with the General Assembly and may not be delegated.

## 2. Authority of the General Assembly to Increase the Salary of a General Sessions Judge

The second question is whether the General Assembly may increase the salary of the Cumberland County General Sessions Judge now that the county has grown into a higher classification. As discussed above, the General Assembly may not, during the term for which a judge was elected, increase or diminish

the salary of the judge of an inferior court. Tenn. Const. Art. VI, § 7. Statutes now in effect do provide for a change in general sessions judges' salaries based on a change in the population of a county as a result of a census during that judge's term. Judges whose terms began in 1998, therefore, were entitled to a salary adjustment if, under the 2000 census results, the county where they serve moved to a different classification as listed in Tenn. Code Ann. § 16-15-5001(a). Those statutes were enacted before the beginning of the current eight-year judicial term that began September 1, 1998. Under Article VI, Section 7 of the Tennessee Constitution, however, the General Assembly may not constitutionally enact a statute that would immediately increase the salary of a judge of an inferior court already in office above the amount provided by the statute in effect as of September 1, 1998. Any such statutory increase could only apply to the salary of a judge who comes to office after the statute is passed.

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